

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number EB-07-TP-195
ASA Broadcasting, Inc.	)	
	)	NAL/Acct. No. 200832700013
Licensee of Station WXYB	)	
Indian Rocks Beach, FL	)	FRN 0000017558
Facility ID #2918	)	
	)	

**FORFEITURE ORDER**

**Adopted:** May 13, 2008

**Released:** May 15, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to ASA Broadcasting, Inc. ("ASA"), licensee of AM station WXYB, Indian Rocks Beach, FL, for willful and repeated violation of Section 73.1745(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violation involves ASA's operation of its station after sunset in violation of its station authorization.

**II. BACKGROUND**

2. On September 27, 2007, in response to a complaint, agents from the Commission's Tampa Office of the Enforcement Bureau ("Tampa Office") monitored station WXYB in Indian Rocks Beach, FL from approximately 5:30 PM until 9:00 PM. The agents observed that the station remained on the air during this entire period of time. Station WXYB is authorized only for daytime operations and local sunset on this date was 7:23 PM.

3. On October 1, 2007, agents from the Tampa Office again monitored the station's transmissions from approximately 5:30 PM until 9:00 PM. The agents observed that the station remained on the air during this entire period of time. Local sunset on this date was 7:18 PM.

4. On December 7, 2007, agents from the Tampa Office, accompanied by the President and Chief Operator of ASA, inspected station WXYB. Although they were able to reduce power, neither the Chief Operator nor the President was able to take the station off the air during the inspection. Both were unaware of this equipment malfunction or that the station was operating after sunset. The Chief Operator was unable to produce any station logs for the station. On December 10, 2007, the Chief Operator contacted the Tampa Office and stated that the station was still not going off the air at sunset but was reducing power at sunset.

5. On April 8, 2008, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to ASA in the amount of four thousand dollars (\$4,000), for the apparent willful and repeated violation of

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<sup>1</sup> 47 C.F.R. § 73.1745(a).

Section 73.1745(a).<sup>2</sup> ASA submitted a response to the *NAL* requesting a reduction of the proposed forfeiture.

### III. DISCUSSION

6. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining ASA’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

7. Section 73.1745(a) of the Rules<sup>6</sup> requires that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part. Station WXYB is only authorized to operate during the day. On September 27 and October 1, 2007, agents from the Tampa Office observed that station WXYB remained on the air post sunset local time. The agents monitored station WXYB’s transmissions from approximately 5:30 until 9:00 PM on both dates and observed that the station remained on the air the entire time. On December 7, 2007, during an inspection, ASA was unable to take station WXYB off the air. On December 10, 2007, ASA stated it was still unable to take its station off the air at sunset. In response to the *NAL*, ASA requests a reduction or cancellation of the forfeiture, because its violation was attributable to faulty equipment. ASA claims it was unaware of the malfunction prior to the inspection on December 7, 2007, and that it has since repaired the transmitter and transmitter remote controller. We find, however, that ASA’s arguments provide no reason to reduce or cancel the forfeiture. ASA does not deny that its violation was repeated, and we could have issued the forfeiture based solely on its repeated violation of the rules. Moreover, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>7</sup> Thus, based on the evidence before us, we find that ASA willfully<sup>8</sup> and repeatedly<sup>9</sup> violated Section 73.1745(a) of the Rules by operating post sunset violation of its station authorization.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700013 (Enf. Bur., Tampa Office, April 8, 2008) (“*NAL*”).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>6</sup> 47 C.F.R. § 73.1745(a).

<sup>7</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

8. ASA also requests a reduction of the forfeiture based on its history of compliance with the rules. We have reviewed the record and agree. Therefore, we reduce the forfeiture to \$3,200 based on ASA's history of compliance with the rules.

9. We have examined ASA's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that a reduction of the proposed forfeiture to \$3,200 is warranted, based on ASA's history of compliance.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, ASA Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for violation of Section 73.1745(a) of the Rules.<sup>10</sup>

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to ASA Broadcasting, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

<sup>10</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1745(a).

<sup>11</sup> 47 U.S.C. § 504(a).